

1 DAVID D. LAWRENCE, State Bar No. 123039  
dlawrence@lbaclaw.com  
2 DENNIS M. GONZALES, State Bar No. 59414  
dgonzales@lbaclaw.com  
3 NATHAN A. OYSTER, State Bar No. 225307  
noyster@lbaclaw.com  
4 LAWRENCE BEACH ALLEN & CHOI, PC  
100 West Broadway, Suite 1200  
5 Glendale, California 91210-1219  
Telephone No. (818) 545-1925  
6 Facsimile No. (818) 545-1937

7 Attorneys for Defendant  
Burbank Police Department Officer Gunn  
8

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11

12 PRESTON SMITH, an individual;

13 Plaintiff,

14 vs.  
15

16 CITY OF BURBANK; BURBANK  
17 POLICE DEPARTMENT;  
BURBANK POLICE DEPARTMENT  
18 OFFICER GUNN; BURBANK  
POLICE DEPARTMENT OFFICER  
19 BAUMGARTEN; BURBANK  
POLICE DEPARTMENT OFFICER  
20 EDWARDS; AND DOES 1  
THROUGH 100, INCLUSIVE  
21

22 Defendants.  
23

Case No. CV 10-8840 VBF (AGR<sub>x</sub>)

Honorable Valerie Baker Fairbank

**STIPULATION FOR AN ORDER  
STAYING THE CASE, VACATING  
THE TRIAL, AND VACATING  
ALL PRE-TRIAL DATES**

Trial Date: November 8, 2011  
Time: 8:30 a.m.  
Courtroom: 9

24 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND  
25 THEIR ATTORNEYS OF RECORD:

26 //

27 //

28 //

1 Plaintiff PRESTON SMITH (hereinafter "Plaintiff") and Defendants CITY  
2 OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER  
3 BAUMGARTEN, OFFICER EDWARDS, and OFFICER GUNN (hereinafter  
4 "Defendants"), through their respective attorneys of record, hereby enter into the  
5 following stipulation:

6 1. This litigation relates to the April 10, 2009 arrest of Plaintiff  
7 PRESTON SMITH by officers from the Burbank Police Department.

8 2. On April 29, 2009, Plaintiff PRESTON SMITH pled guilty to  
9 violating California Penal Code § 148(a)(1) as a result of the arrest. This  
10 conviction has not been expunged, withdrawn, or overturned.

11 3. Counsel for all parties have been advised and believe that the Los  
12 Angeles Sheriff's Department is currently conducting a criminal investigation  
13 into the allegations made by Mr. Smith concerning his arrest.

14 4. Plaintiff recently noticed the depositions of all three individual  
15 Defendants. The depositions were noticed for March 3, 2011 and March 8, 2011.

16 5. After meeting and conferring on these issues, all counsel agree that  
17 the individual Defendants cannot be deposed until the Los Angeles Sheriff's  
18 Department has completed its investigation, because of the officers' Fifth  
19 Amendment rights.

20 6. The parties are not certain when the investigation conducted by the  
21 Los Angeles Sheriff's Department will be completed. Furthermore, the parties  
22 cannot control when the investigation of the Los Angeles Sheriff's Department  
23 will be completed.

24 7. To allow for the completion of this investigation without interfering  
25 with the Fifth Amendment rights of the individual Defendants, the parties  
26 respectfully request that the Court vacate all trial and pretrial dates until the  
27 investigation has been completed.

28 8. The parties disagree as to the issues set forth in paragraphs 9 and 10

1 of this Stipulation. The parties' respective positions are set forth below.

2 9. Defendants request that the Court stay all proceedings with the  
3 exception that the Court allow the filing and hearing of motions pursuant to Rule  
4 12(c) of the Federal Rules of Civil Procedure, focused on whether Plaintiff's  
5 claims are barred by his conviction for violating California Penal Code §  
6 148(a)(1) under the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 114  
7 S.Ct. 2364 (1994), hereinafter "the *Heck* motions". Defendants contend that the  
8 *Heck* motions will be based upon the pleadings in this action and the court file in  
9 the underlying criminal action against Plaintiff PRESTON SMITH. Defendants  
10 further contend that Plaintiff does not need to conduct discovery to oppose the  
11 *Heck* motions.

12 10. Plaintiff requests that the Court stay all proceedings in this matter  
13 until the investigation has been completed. Plaintiff contends that the depositions  
14 of the individual Defendants must be completed before Plaintiff can oppose the  
15 *Heck* motions.

16 11. If the Court is inclined to agree with the position set forth by  
17 Defendants in paragraph 9 of this Stipulation, the parties propose a hearing date  
18 of May 16, 2011 for the *Heck* motions.

19 12. The parties jointly propose a schedule in which the parties will  
20 submit a Joint Status Report to this Court by May 16, 2011 advising the Court as  
21 to whether the investigation being conducted by the Los Angeles Sheriff's  
22 Department has been completed. The parties will submit further Joint Status  
23 Reports every 60 days thereafter until the investigation being conducted by the  
24 Los Angeles Sheriff's Department has been completed.


25 13. Plaintiff's counsel is scheduled for surgery on March 9, 2011, and  
26 has been advised by his surgeon, Dr. Andrew DaLio, that he will not be able to  
27 work for a minimum of four weeks following surgery. Should the Court schedule  
28 the *Heck* motions without providing Plaintiff an opportunity to depose the

1 Defendant police officers, and in view of counsel's extended recovery period  
2 following surgery, Plaintiff proposes May 16, 2011 as the hearing date for the  
3 *Heck* motions. Defendants are amenable to this request.

4 The parties respectfully request that the Court enter an Order consistent  
5 with this Stipulation.

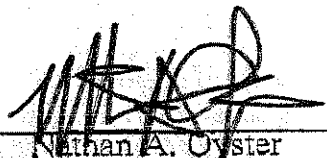
6  
7 Dated: February 25, 2011

LAW OFFICES OF MANUEL H. MILLER  
A Professional Corporation

8  
9  
10 By   
11 Max A. Sauler  
12 Attorney for Plaintiff  
13 Preston Smith

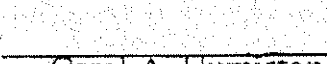
14 Dated: February 28, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

15  
16 By   
17 Nathan A. Oyster  
18 Attorneys for Defendant  
19 Burbank Police Department Officer Gunn

20 Dated: February \_\_\_, 2011

DENNIS A. BARLOW  
City Attorney

21  
22 By   
23 Carol A. Humiston  
24 Sr. Assistant City Attorney  
25 City of Burbank, Burbank Police  
26 Department, Burbank Police Officers  
27 Adam Baumgarten and Michael Edwards  
28

1 Defendant police officers, and in view of counsel's extended recovery period  
2 following surgery, Plaintiff proposes May 16, 2011 as the hearing date for the  
3 *Heck* motions. Defendants are amenable to this request.

4 The parties respectfully request that the Court enter an Order consistent  
5 with this Stipulation.

6  
7 Dated: February \_\_\_, 2011

LAW OFFICES OF MANUEL H. MILLER  
A Professional Corporation

8  
9  
10 By \_\_\_\_\_  
11 Max A. Sauler  
12 Attorney for Plaintiff  
13 Preston Smith

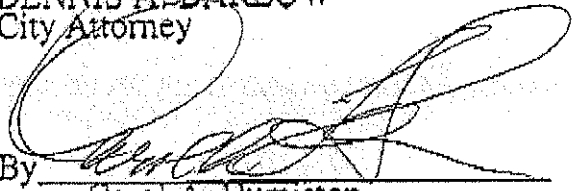
14 Dated: February \_\_\_, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

15  
16 By \_\_\_\_\_  
17 Nathan A. Oyster  
18 Attorneys for Defendant  
19 Burbank Police Department Officer Gunn

20 Dated: February 27, 2011

DENNIS A. BARLOW  
City Attorney

21  
22 By  \_\_\_\_\_  
23 Carol A. Humiston  
24 Sr. Assistant City Attorney  
25 City of Burbank, Burbank Police  
26 Department, Burbank Police Officers  
27 Adam Baumgarten and Michael Edwards  
28